

HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

TRANSFER CIVIL MISCELLANEOUS PETITION No.226 of 2015

ORDER:

This petition is filed under Section 24 CPC to withdraw O.S. No.55 of 2012 from the file of District Court, Ongole, Prakasam District and transfer the same to the file of V Additional District Court, Medak District at Sangareddy, for trial and disposal along with O.S. No.71 of 2011.

2. The contention of the learned counsel for the petitioner is two fold:

- (1) one Vudumula Lakshmi Narayana Reddy (VLN Reddy) had obtained the signatures of the petitioner on different papers while acting as his Election Incharge and created the promissory notes in question; and
- (2) the defence of the petitioner in both the suits is one and the same; therefore, it is a fit case to allow the petition.

Per contra, learned counsel for the respondent submitted that there is no relationship between the respondent and VLN Reddy (plaintiff in O.S. No.71 of 2011); therefore, the present petition is liable to be dismissed. He further submitted that merely because the defence of the petitioner in both the suits is common, by itself is not a valid ground for allowing of the petition.

3. The facts leading to filing of the petition are briefly as follows: The respondent herein filed O.S. No.55 of 2012 against the petitioner herein on the file of Principal District Court, Ongole, for recovery of the money basing on the promissory note dated 04.4.2009. One VLN Reddy filed O.S. No.71 of 2011 against the petitioner herein on the file of V Additional District Court, Medak District at Sangareddy for recovery of the money basing on the promissory note dated 23.3.2009. The petitioner herein filed written statements in both the suits by taking a specific plea that VLN Reddy, who was his Election Incharge in General Elections 2009, created promissory notes dated

04.4.2009 and 23.3.2009 and got filed the two suits at two different places with an ulterior motive to harass the petitioner. O.S. No.55 of 2012 is filed basing on the promissory note dated 04.4.2009. As per the recitals therein, the petitioner executed the promissory note in favour of the respondent herein within the territorial jurisdiction of the District Court, Ongole. O.S. No.71 of 2011 is filed basing on the promissory note dated 23.3.2009. As per the recitals therein, the petitioner executed the promissory note in favour of VLN Reddy within the territorial jurisdiction of the District Court, Medak District at Sangareddy.

4. As pointed out by the learned counsel for the petitioner, one Venkat Reddy is the scribe of the promissory note dated 04.4.2009 and one of the attestors of the promissory note dated 23.3.2009. It is not the case of the petitioner that the said Venkat Reddy is relative of the respondent herein. It is an admitted fact that the petitioner hails from Khammam District and respondent hails from Prakasam District whereas VLN Reddy hails from Medak District. It is also an admitted fact that the petitioner contested as MLA of Pinapaka Assembly segment in Khammam District in 2009 General Elections.

5. At the time of the arguments, learned counsel for both the parties submitted that the trial in O.S. No.55 of 2012 is commenced. The petitioner herein filed written statements in both the suits prior to 2012. The ground on which the petitioner has sought transfer of O.S.No.55 of 2012 is very much within his exclusive knowledge from 2012 onwards. The provisions of the Limitation Act are not applicable to the petitions filed under Section 24 CPC. However, the Court has to take into consideration the conduct of the parties to the proceedings in order to ascertain the real intention of the parties in filing this type of petitions. The petitioner has not assigned reasons much less cogent and convincing reasons for non-filing of appropriate petition, at the earliest point of time i.e., before filing written statements or at least

before commencement of trial.

6. The learned counsel for the petitioner has drawn my attention to the decision of this court in **Kanuru Basava Punnarao v Puttagunta**

Nageswar Rao^[1]. Relevant portion reads as under:

“Normally the plaintiff has the right to choose the place of suing and the mere convenience of the defendant or his witnesses cannot be a valid ground for the transfer of the suit, but where the defence in all the suits is practically one and the same and common questions of fact and law arise for decision, to secure the ends of justice and to prevent multiplicity of proceedings and also the possibility of conflicting judgments, Courts have generally held that it is better to have all such suits tried at one place only by the same Court. Ultimately the question depends on the interests of justice and not the convenience of one party or the other.”

7. As per the principle enunciated in the case cited supra, if the questions of fact and law involved in both the suits are one and the same or at least identical, then the court can transfer the case to secure ends of justice. The common question of fact involved, as contended by the petitioner, is that VLN Reddy i.e., the plaintiff in O.S. No.71 of 2011 has created these two promissory notes. The contention raised by the petitioner is purely a disputed question of fact, touching the merits of the main case. If this court accepts the said contention, certainly it would amount to conceding the defence of the petitioner, which is not permissible under law. The cause of action, in both the suits, is not one and the same. The plaintiffs, in both the suits, are not one and the same. Simply because the petitioner has taken the same stand in both the suits, that itself is not a valid ground to exercise the powers conferred on this court under Section 24 CPC, without considering other factual and legal aspects. The witnesses to be examined in both the suits are not common. If O.S. No.55 of 2012 is transferred from Ongole to Sangareddy, it may cause untold hardship to the respondent. The court has to take into consideration the ground realities as well as the inconvenience likely to be caused to

the parties to the proceedings. Admittedly, the petitioner is not resident of Medak District. Various contentions raised by the petitioners are purely disputed questions of fact. While deciding the petitions of this nature, the court shall not express any opinion on the disputed questions of fact. Common question of law is not involved in both the suits. The court has to apply its judicial mind to the facts of each case while transferring the matters. Even if the petition is dismissed, it may not cause any hardship to the petitioner as he belongs to Khammam District and the suits are pending in Medak District and Prakasam District. If the two courts are allowed to try and dispose of the suits separately, such judgments cannot be said to be conflicting with each other, as each case will be decided on its own merits.

8. In the light of the foregoing reasons, I am of the considered view that the principle enunciated in the case cited supra is not applicable to the facts of the case on hand. On the other hand, the petitioner failed to make out grounds much less valid grounds for allowing the petition. The petition lacks merits and bona fides.

9. In the result, the Transfer CMP is dismissed. The trial courts are hereby directed to dispose of the suits without being influenced by the observations made herein above. Miscellaneous petitions, if any, pending in this transfer petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 09.7.2015.

YS

[\[1\]](#) 1999 (6) ALD 707